

Service Date: November 2, 2005

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Application)	UTILITY DIVISION
of NorthWestern Energy's for Automatic)	
Rate Adjustment and Tracking for Taxes)	DOCKET NO. D2004.11.186
and Fees)	ORDER NO. 6621a

FINAL ORDER

Background

1. On November 17, 2004, NorthWestern Energy ("NWE") filed an Application for Interim and Final Rate Adjustment ("Application") with the Montana Public Service Commission ("Commission"). NWE requested authority to increase certain rates and charges to recover increased Montana state and local taxes and fees. NWE stated that § 69-3-308, MCA, permits "a public utility to file for automatic adjustment and tracking of Montana state and local taxes and fees paid by the utility."
2. NWE asserted that it needed to increase electric utility revenues by \$685,421 and natural gas utility revenues by \$173,409. NWE estimated that its 2005 tax liability on its electric utility would be \$41,093,769, an increase of \$3,907,711 over 1999 test year tax expense. NWE represented that \$3,222,289 of the increased electric utility tax expense would be collected by tax load growth revenues. The difference between the tax expense increase (\$3,907,711) and the tax load growth revenues (\$3,222,289) is the amount of the requested electric utility revenue increase.
3. NWE estimated that its 2005 tax liability on its natural gas utility would be \$14,840,563, an increase of \$668,890 over 1999 test year tax expense. NWE

represented that \$495,480 of the increased natural gas utility tax expense would be collected by tax load growth revenues. The difference between the tax expense increase (\$668,890) and the tax load growth revenues (\$495,480) is the amount of the requested natural gas utility revenue increase.

4. On November 26, 2004, the Commission issued a Notice of Application, Determination of Error, Opportunity to Comment and to Request Hearing and Provisional Notice of Public Hearing ("Notice"). In the Notice the Commission stated, "the PSC has not determined whether the revised rate schedules properly include adjustments for the net change in federal and state income tax liability caused by the deductibility of state and local taxes and fees."

5. On December 8, 2004, in response to the Notice, the Montana Consumer Counsel ("MCC") filed comments in this docket. The MCC urged the Commission to conclude that the revised rate schedules did not properly include adjustment for the net change in federal and state income tax liability. The MCC stated, "The Commission should require NWE to file rate schedules that do not remove the income tax deductibility adjustment."

6. On December 8, 2004, in response to the Notice, NWE filed comments in this docket. The thrust of NWE's comments was that no adjustment should be made to allowed revenue requirement due to the federal and state income tax effects. NWE asserted, "If 40% of the property tax adjustment is effectively disallowed because of a flawed assumption regarding the tax effect, the purpose of the tracker legislation will be significantly thwarted."

Discussion

7. Section 69-3-308(2)(a)(i), MCA, provides in pertinent part, “The commission shall allow a public utility to file rate schedules containing provisions for the automatic adjustment and tracking of Montana state and local taxes and fees, except state income tax, paid by the public utility. The resulting rate schedule changes must include: (A) adjustments for the net change in federal and state income tax liability caused by the deductibility of state and local taxes and fees”

8. The Commission has interpreted § 69-8-308(2)(a)(i)(A), MCA, to require a reduction in revenue requirement equal to the combined income tax rate multiplied by the change in state and local taxes and fees. *See In the Matter of Energy West Montana*, Docket No. D2003.12.165, Order No. 6556, ¶¶ 10 and 14 (April 16, 2004).

9. In calculating a proposed Tax Gross-Up Tax Expense Change, NWE used a tax rate of 39.39%. Application, Appendix A (Line 19 divided by Line 9).

10. The adjusted increase in revenue requirement for the electric utility is \$415,434 and for the natural gas utility is \$105,104. The table below illustrates the adjustments:

	<i>Electric Utility</i>		<i>Natural Gas Utility</i>	
	<i>NWE Proposal</i>	<i>As Adjusted</i>	<i>NWE Proposal</i>	<i>As Adjusted</i>
Net Incremental Taxes & Fees	\$685,421	\$685,421	\$173,409	\$173,409
Tax Adjustment at 39.39%	(0)	(\$269,987)	(0)	(\$68,305)
Change in Revenue Requirement	\$685,421	\$415,434	\$173,409	\$105,104

11. According to NWE's original Application, \$1,256,116 of the total tax expense and \$209,553 of the increased tax expense allocated to the electric utility is attributable to increased Wholesale Energy Transaction ("WET") taxes. The WET tax was based on actual for the first 9 months of 2004 and an estimate of the final quarter. The actual total of WET tax for the year is \$1,288,250. Of that amount \$421,258 is attributable to Choice Customers. The incremental change from 1999 in WET tax from 1999 to 2004 is \$241,687, of which approximately 32.70% is attributable to Choice Customers ($\$241,687 * 32.70\% = \$79,031$). Adjusting the \$79,031 by NWE's tax rate of 39.39% is an after tax incremental impact of \$47,901 ($\$79,031 * (1 - 39.39\%) = \$47,901$)

12. The Commission determines that the effect of the WET tax attributable to Choice Customers is immaterial to default customers.

Conclusions of Law

13. NWE provides electric and natural gas service within the State of Montana and as such is a "public utility" within the meaning of § 69-3-101, MCA.

14. The Commission properly exercises jurisdiction over NWE's Montana rates, service and operations pursuant to Title 69, Chapter 3, MCA.

15. Section 69-3-308, MCA requires the Commission to allow a public utility to file rate schedules to recover increased Montana state and local taxes and fees.

16. Section 69-3-308(2)(a)(i)(A) requires rate schedules changes resulting from changed Montana state and local taxes include adjustments for the net change in federal and state income tax liability caused by the deductibility of state and local taxes and fees. Any adjustment attributable to increased Montana state and local taxes and fees

must be reduced to account for the deductibility of state and local taxes and fees in calculating federal and state income tax liability.

Order

1. The Commission authorizes as permanent the rates NWE is presently using on an interim basis the rates and charges in Electric Tariff Schedules REDS-1, GSEDS-1, GSEDS-2, ISEDS-1 and ELDS-1 by a uniform percentage collecting \$415,434 annually for service provided on or after January 1, 2005.

2. NorthWestern Energy is authorized to increase on a permanent basis rates and charges in Natural Gas Tariff Schedules D-RG-1, D-GSG-1, D-RGCA-1, D-GSGCA-1, D-FTG-1, D-ITG-1, T-FUGC-1, T-FTG-1, T-ITG-1 and T-FSG-1 by a uniform percentage to collect \$105,104 annually for service provided on or after January 1, 2005.

3. NorthWestern Energy must file tariffs to implement the authority granted in this Order.

4. NorthWestern Energy must comply with all findings of fact and conclusions of law in this Order.

DONE IN OPEN SESSION at Helena, Montana on the 24th day of October, 2005
by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

Greg Jergeson, Chairman

Brad Molnar, Vice Chairman

Doug Mood, Commissioner

Robert H. Raney, Commissioner

Thomas J. Schneider, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.